

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
DOWNEAST AQUACULTURE FOR AN)	
AQUACULTURE LEASE LOCATED NORTH OF)	FINDINGS OF FACT,
ST. HELENA ISLAND, MERCHANT ROW ,)	CONCLUSIONS OF LAW
STONINGTON, HANCOCK COUNTY, MAINE)	AND DECISION

On December 8, 2004, Downeast Aquaculture of Stonington, Maine applied for an aquaculture lease totaling 4.0 acres in the coastal waters of the State of Maine, located north of St. Helena Island in Merchant Row, Stonington, Hancock County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating blue mussels (Mytilus edulis) using suspended culture techniques. The application was accepted as complete on December 30, 2004. A public hearing on this application was held on February 15, 2006 at 6:00 p.m. in Stonington. No members of the public attended the hearing.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that, taking into consideration the number and density of aquaculture leases in an area, the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

Evidence Introduced Concerning the Nature

and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3).

According to the application, the proposed lease is sought to raise blue mussels on a lease site totaling 4.0 acres, for a lease term of ten (10) years. The applicant currently operates an experimental aquaculture lease in the proposed lease area. The proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of growing mussels on dropper ropes suspended from a maximum of six 40' x 40' rafts. Seeding takes place in October or May of each year and consists of using an AGUIN seed machine to attach the seed mussels to the rope with biodegradable cotton. Harvesting the mussels involves lifting the ropes with a crane and basket and washing and grading the mussels. Approximately 1000 bushels of mussels are harvested from each raft. The applicant would visit the site approximately 3-5 days per week to monitor and operate the lease site.

According to the application, the barge "Mumbles" would be used for seeding and harvesting. The vessel is equipped with hydraulically operated processing machinery driven off the main engine. The main engine has a muffler to reduce noise. The applicant does not plan to use lighting at the lease site other than required navigational lighting. According to the application, the rafts are constructed of black floats, wooden crossbeams and gray galvanized frames. All seed mussels would be collected on the ropes on site or purchased from other growers in Maine.

In accordance with Department regulations, 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to this environmental characterization, the bottom of the proposed lease site consists of soft mud sediments. Fauna consists of rock crabs, mussels, mud shrimp and eel holes. The water depths are estimated to be between 50 and 95 feet at mean low water. The current is estimated to be approximately 6.8

cm per second and flows in a east/west direction. Additionally, the proposed lease site is not located within an Essential Habitat.

According to the applicant, the proposed lease site is located 233 feet from St. Helena Island. There are no docks locate in the area of the proposed lease. The primary navigation channel runs to the north of the proposed lease. According to the application, approximately 20-30 vessels pass within 500 feet of the proposed site daily in the summer months. The applicant would have 360° white solar navigational lights on at least the two outside rafts. According to the application, there are no known mooring owners, fishermen or draggers who actively use the proposed lease site.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on November 29, 2005. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit. According to the AEC's report, the proposed lease, which is actually 3.74 acres, is located north of St. Helena Island in water depths ranging from 88-95 feet. The bottom of the proposed site is comprised of very soft sediments with no attached vegetation. Mud shrimp are the dominant species in the proposed lease area. According to the AEC, the environment under the rafts on the existing experimental lease consists of a heavy bed of blue mussels, sea stars and rock crabs. Outside of the raft footprints, mussels, stars and crabs were much less abundant. The AEC noted that the mussel bed under the existing rafts seemed to be thriving and nearly all the mussels were clean and closed tightly. The community under the rafts appeared to be very much alive and exceptionally healthy. Additionally, the proposed lease site is not located within an Essential or Significant Wildlife Habitat.

According to the AEC, the proposed activities will not interfere with navigation or riparian ingress and egress. According to the AEC's report, no moorings were observed within the boundaries of the proposed lease site. An old abandoned dock was observed along the shoreline of St. Helena Island. The proposed lease is located 585 feet south of the main

navigational channel. Whereas the proposed expansion of the experimental lease site is to the west, the distance from the lease site to the navigational channel to the north will remain the same as it has been for the past three years. The expansion to the west will encroach upon an area of navigable water between St. Helena and Potato Island. There would be approximately 450 feet of navigable waters remaining between the western end of the proposed lease site and Potato Island. A vessel headed north through the passage between the islands would have to maintain a slightly more northward heading to get around the proposed lease boundary.

According to the AEC's report, approximately 5 lobster trap buoys were observed within the boundary of the western portion of the proposed lease site during the site visit. According to the AEC, the Department has not received any complaints regarding the applicant's experimental lease. No lobstermen submitted comments regarding the proposed lease. The nearest aquaculture lease is located over 5 nautical miles from the proposed lease site in Long Cove, Deer Isle. According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division.

According to the AEC's report, the Stonington Harbormaster indicated that he foresaw no problems with navigation in the area of the proposed lease, and that no moorings or traditional storm anchorages existed in the area. He stated that lobstering is the primary fishery in the area, but the lease site would be accommodated. He also stated that he has not received any complaints regarding the applicant's experimental lease.

Findings of Fact

The proposed lease site is located north of St. Helen Island in water depths ranging from 50 to 95 feet at MLW. No moorings or docks are located within the boundaries of the proposed lease site. The proposed lease is located 585 feet south of the main navigational channel, which is the same distance at which the experimental lease has been located for the past three years. The expansion of the proposed lease site to the west of the experimental lease will encroach upon an area of navigable water between St. Helena and Potato Island. There would be approximately 450 feet of navigable waters remaining between the western end of the

proposed lease site and Potato Island. A vessel headed north through the passage between the islands would have to maintain a slightly more northward heading to get around the proposed lease boundary. The rafts will have solar-powered navigational lights in order to aid mariners. The applicant has operated a mussel farm in the same location for the past 3 years without incident. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Approximately 5 lobster trap buoys were observed within the boundary of the western portion of the proposed lease site during the site visit. No lobstermen submitted comments regarding the proposed lease site. In the three years that the experimental lease has been in place the Department has not received any complaints of interference with fishing or other activities. The nearest aquaculture lease is located over 5 nautical miles from the proposed lease site. The area of the proposed lease is classified as “open” for the harvest of shellfish. Based on this evidence, I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

The bottom of the proposed site is comprised of very soft sediments with no attached vegetation. Local fauna include mud shrimp, blue mussels, sea stars and rock crabs. Blue mussels, sea stars and rock crabs are abundant under the rafts. The community under the rafts is very much alive and exceptionally healthy. The proposed lease site is not located within an Essential or Significant Wildlife Habitat. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All seed mussels will be collected on the ropes on site or purchased from other Maine growers. Based on this evidence, I find that there is an available source of blue mussels.

The proposed lease site is not located within 1,000 feet of any public beaches, parks, docking facilities, or conserved land. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of a

beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency.

The motorized equipment on site will consist of the harvest barge "Mumbles" which is equipped with a muffler. The applicant does not plan to use lighting at the lease site other than required navigational lighting. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

The colors of the proposed gear, black and gray, will allow the gear to blend in with the surrounding area. All equipment on the lease site will be less than 20 feet in height. I find that the proposed lease will comply with visual impact criteria.

Conclusions of Law

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of blue mussels;
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency;
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and
8. The aquaculture activities proposed for this site will be in compliance with visual impact criteria.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 3.74 acres from the date of this decision for the purpose of cultivating blue mussels (Mytilus edulis) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease;
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
- (3) firearms are not permitted on the lease for the purpose of predator control.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources